

<b>TO:</b> Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Southern District of Texas on the following  Patents or  Trademarks:

DOCKET NO. H-08cv328	DATE FILED 1/29/2008	U.S. DISTRICT COURT Southern District of Texas	
<b>PLAINTIFF</b>  Eckel Manufacturing Co, Inc		<b>DEFENDANT</b>  Superior Manufacturing and Hydraulics Inc Daniel S Bangert	
<b>PATENT OR TRADEMARK NO.</b>		<b>DATE OF PATENT OR TRADEMARK</b>	<b>HOLDER OF PATENT OR TRADEMARK</b>
1	<u>7,036,397</u>		see attached complaint
2	<u>6,755,097</u>		
3	<u>6,378,399</u>		
4			
5			

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
<b>PATENT OR TRADEMARK NO.</b>	<b>DATE OF PATENT OR TRADEMARK</b>	<b>HOLDER OF PATENT OR TRADEMARK</b>
1		
2		
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In the above—entitled case, the following decision has been rendered or judgement issued:

<b>DECISION/JUDGEMENT</b>	
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CLERK <b>MICHAEL N. MILBY</b>	(BY) DEPUTY CLERK 	DATE 1/30/2008
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

ECKEL MANUFACTURING CO., INC.	§	
	§	
Plaintiffs	§	
	§	
SUPERIOR MANUFACTURING &	§	Civil Action No.: <u>H-08CV328</u>
HYDRAULICS, INC. and DANIEL S.	§	
BANGERT	§	Jury Demanded
	§	
Defendants	§	

**COMPLAINT**

**DECLARATORY JUDGMENT OF NON-INFRINGEMENT**  
**AND PATENT INVALIDITY**

**NATURE OF THE ACTION**

1. This is a Declaratory Judgment action for a declaration of invalidity and non-infringement of U.S. Patent Nos. 7,036,397, 6,755,097, and 6,378,399 [hereinafter "Superior Patents"].
2. Plaintiff Eckel Manufacturing Co., Inc. ("Eckel") is a corporation existing under the laws of the State of Texas and having a principal place of business in Odessa, Texas, and sells tongs internationally, and specifically to customers in Houston, Texas. Eckel manufactures and sells power tongs and backup tongs which include dies for gripping a tubular.
3. On information and belief, Superior is a corporation existing under the laws of the State of Louisiana, having a principal place of business at 4225 Highway 90 East, Broussard, LA 70518. On information and belief, Superior sells tongs internationally, and specifically to companies in Houston, Texas.
4. On information and belief, Daniel S. Bangert ("Bangert") is an individual living in Broussard, Louisiana, and is the named inventor and current owner of the Superior Patents.

The Superior Patents have been exclusively licensed by Bangert to Superior, and Superior acts as the agent of Bangert in enforcing the Superior Patents, and has the power to represent Bangert in matters relating to the Superior Patents.

5. On information and belief, Bangert also promotes products allegedly within the scope of the Superior Patents to parties in Houston, and has shown such products at national trade shows.

6. By letters dated November 27, 2007 and January 14, 2008, Superior alleged that Eckel infringes one or more claims of the Superior Patents, and has stated its intention to file suit for infringement. Eckel has a reasonable apprehension that it will be sued by Defendants for patent infringement. This case thus presents an actual controversy within 28 U.S.C. § 2201.

7. Each of the Superior Patents involves a die for gripping a tubular, with grit particles on the face of the die. The '399 patent includes product and method claims, the '097 patent includes method and product-by-process claims, and the '397 patent also includes method and product by process claims.

8. Most independent claims of the '397, '097, and '399 Patents expressly recite and the remaining independent claims inherently recite a step of annealing the body of the die to soften the die material, so that the harder particles will become at least partially embedded in the surface of the die when engaging a tubular. Eckel has advised Superior that it does not perform this annealing step, but Superior nevertheless contends there is infringement, and contends that all claims do not expressly recite the annealing step. Based on the file wrapper arguments and the prior art, all claims must be limited to include a die annealing process, and that the absence of such a limitation results in the claims being invalid.

**COUNT I – NON-INFRINGEMENT**

9. Paragraphs 1-8 are incorporated herein by reference.
10. Eckel manufactures and sells dies for gripping engagement with a tubular. The process used by Eckel is substantially different from that taught by the Superior patents, and the Eckel dies are substantially different than dies manufactured by Superior.
11. Eckel does not infringe any claim of the '397, '097 or '399 Patents.

**COUNT II – INVALIDITY**

12. Paragraphs 1-11 are incorporated herein by reference.
13. Eckel alleges that each of the Superior Patents is invalid for one or more of the following reasons:
  - (a) The alleged inventor of the Superior Patents is not the first, true, and sole inventor of the alleged improvements purported to be described in these patents. If claims are construed according to Superior's construction, the same methods and products were invented, known to, and used by others in this country before Bangert's alleged invention thereof, and were patented and described in printed publications in this or a foreign country before the alleged invention thereof.
  - (b) By reason of the proceedings in the Patent and Trademark Office during the prosecution of the applications which resulted in the Superior Patents, Defendants are estopped to claim for their patents a construction which would cause the patents to cover or include any product manufactured, used, or sold, or any process or method used by Eckel.

(c) The alleged invention of each of the Superior Patents was made by another in this country before Bangert's alleged inventions, and such other person had not abandoned, suppressed, or concealed it.

(d) The Superior Patents and each of the claims are invalid under 35 U.S.C. § 103 because of the differences between the subject matter of the claims which Superior seeks to enforce and the prior art are such that the subject matter as a whole would have been obvious at the time the alleged invention was made to a person having ordinary skill in the art.

(e) The Superior Patents do not particularly point out and distinctly claim the improvement or combination which the patentees claim as their invention.

(f) The specification of each of the Superior Patents does not contain a written description of the alleged invention, and the manner and process of using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains to make or use the same.

(g) The claims of each of the Superior Patents are excessively vague and indefinite and do not distinctly point out and define the invention.

(h) The alleged invention in each of the Superior Patents was disclosed in a United States patent by another before the alleged invention by the patentee of each of the patents in suit.

(i) Before the alleged invention or discovery by the named inventor, the alleged invention set forth in each of the Superior Patents was known or used by others.

14. Eckel demands a jury in this case.

WHEREFORE, Eckel requests that this Court enter judgment that:

(a) U.S. Patent Nos. 7,036,397, 6,755,097, and 6,378,399 are each invalid and/or unenforceable;

(b) Eckel has not infringed, induced others to infringe or contributed to infringement of any of the claims of U.S. Patent Nos. 7,036,397, 6,755,097, or 6,378,399;

(c) Superior, its officers, agents, counsel, servants and employees, including Bangert, and all persons in active concert or participation with them, be enjoined from charging infringement or instituting any action for infringement of U.S. Patent Nos. 7,036,397, 6,755,097, and 6,378,399 against Eckel or its customers;

This is an exceptional case under 35 U.S.C. § 285 and Eckel should be awarded reasonable attorneys' fees, expenses and costs in this action; and

Eckel requests that it be granted such further necessary relief as justice may require.

Respectfully submitted,

Dated: January 29, 2008

BROWNING BUSHMAN P.C.

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